

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 213 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 57 OF 2016

SHRI. RAJKUMAR GIRDHARLAL KAHTWANI ... Applicant
Versus
SHRI. PANKAJ DESAI ... Respondent

Mr. Anthony Joe D'silva, Advocate for the applicant.

Coram:- C. V. BHADANG, J.

Date:- 25th October, 2016

P.C.

Issue notice to the respondent, returnable on 22/11/2016.

2. This is an application for suspension of sentence. The applicant has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and has been sentenced to suffer imprisonment till rising of the Court and to pay a compensation of Rs.11 Lakhs and in default, to undergo imprisonment for a period of six months. That has been confirmed in appeal by the learned Sessions Judge. The applicant is presently serving the sentence in default.

3. It is submitted by the learned Counsel for the applicant that the Memorandum of Understanding (MOU) executed between the parties

is still subsisting and as such, the cheque could not be said to have been issued in discharge of a legally enforceable debt or liability. It is submitted that no time was granted by the learned Magistrate for deposit of the compensation as awarded. It is submitted that out of the compensation of Rs.11 Lakhs, Rs.3 Lakhs is deposited before the learned Sessions Judge. The learned Counsel, on instructions, undertakes that the applicant shall deposit Rs.8 Lakhs before this Court within four weeks from today. The statement is accepted.

4. Normally, this Court would be slow in suspending the sentence, which is awarded in default. The substantive sentence of imprisonment till rising of the Court, has obviously been undergone. Be that as it may, having regard to the fact that the applicant undertakes to deposit the remaining amount of compensation, it would be appropriate that reasonable time is granted to the applicant to deposit the same. In such circumstances, following order is passed:

ORDER

- (i) The applicant shall be released on bail on execution of P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (ii) The applicant shall furnish his correct address along with proof before the learned Sessions Judge.
- (iii) The applicant shall deposit Rs.8 Lakhs before this Court within four weeks from today.

- (iv) In the event of default in depositing the said compensation,
the order is liable to be recalled.
- (v) Bail bonds to be furnished before the learned Sessions
Judge.
- (vi) Parties to act on the authenticated copy of the order.

C. V. BHADANG, J.

SMA